

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the
Sales and Use Tax Permit of:
Van Haverens Flower Works Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-captioned matter came on for hearing before Administrative Law Judge Barbara L. Neilson commencing at 10:30 a.m. on February 26, 2003. Wayne L. Sather, Attorney, Minnesota Department of Revenue, Legal Services Division, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared on behalf of the Minnesota Department of Revenue ("the Department"). The Respondent, Van Haverens Flower Works Inc., 415 North First Street, Minneapolis, MN 55401-4305, did not appear. The record closed on the date of hearing.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of the Minnesota Department of Revenue, 600 North Robert Street, St. Paul, MN 55146, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent has failed to pay sales and use taxes owed to the Department as required by law, thereby authorizing the revocation of the Respondent's sales and use tax permit.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice and Order for Hearing with respect to the Respondent was issued by the Minnesota Department of Revenue on January 21, 2003. In the Notice and Order for Hearing, the Department alleged that the Respondent holds Sales and Use Tax Permit number 2216864 issued by the Minnesota Department of Revenue and has failed to pay all sales and use tax due to the State of Minnesota as required by Chapters 289A and 297A of the Minnesota Statutes.

2. The Notice and Order for Hearing contained the following passage: **“The Respondent’s failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department’s allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.”** (Emphasis in original.)

3. The Notice and Order for Hearing was served on Brad Van Haveren, Van Haverens Flower Works Inc., 415 North First Street, Minneapolis, MN 55401-4305, by first class mail on January 21, 2003.

4. The Respondent failed to file a Notice of Appearance with the Office of Administrative Hearings, failed to appear on the scheduled hearing date, and did not make a prehearing request for a continuance or any other relief. The Respondent is, therefore, in default.

5. The allegations and issues set forth in the Notice and Order for Hearing are incorporated herein by reference in their entirety.

6. The Respondent presently holds Sales and Use Tax Permit number 2216884.

7. Those who make taxable sales are by law required to collect and remit sales tax to the State of Minnesota.

8. As of the date of the hearing, the Respondent owed past due state sales tax in the amount of \$19,844.01, plus a penalty of \$2,658.25, plus interest in the amount of \$610.29, for a total amount due and owing of \$23,112.55.^[1] In addition, the Respondent has not filed or paid its November 2002, December 2002, and January 2003, sales tax returns.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 297A.86 and 14.50, and Minn. Rules parts 8130.7300 and 8130.7500.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent is in default under Minn. Rules part 1400.6000 as a result of its failure to appear at the hearing.

4. Under Minn. Rules part 1400.6000, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved without further evidence when a party defaults.

5. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20 and Minn. Rules part 8130.7500.

6. As a result of the failure to pay sales taxes owed to the Department, including penalties and interest, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 297A.86.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue revoke sales and use tax permit number 2216864 issued to Van Haverens Flower Works Inc.

Dated: March 10, 2003

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape recorded (one tape).

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] Ex. 1.